

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERNESTO LOPEZ,		:	23cv5515 (DLC)
		:	
	Movant,	:	<u>ORDER</u>
-v-		:	
		:	
UNITED STATES OF AMERICA,		:	
		:	
	Respondent.	:	
		:	
-----X			

DENISE COTE, District Judge:

On July 2, 2019, Ernesto Lopez was sentenced, following his conviction at trial, principally to a term of imprisonment of 60 months. Lopez filed a notice of appeal, but on July 25, 2019, the Court of Appeals granted his motion to withdraw the appeal.

On October 20, 2022, Ernesto Lopez filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the Eastern District of New York. On April 7, 2023, that petition was transferred to the Southern District of New York, and on April 10, assigned to this Court. Lopez contended in his October 20, 2022 petition that the Supreme Court's decision in Ruan v. United States, 142 S. Ct. 2370 (2022), required that his conviction be vacated due to the Court's failure to charge the jury in accordance with the law set forth in Ruan.


In an April 12, 2023 Order, the Court stated that it may have been appropriate under Second Circuit law to consider Lopez's October 20, 2022 petition as properly filed under § 2241 pursuant to the savings clause of subsection (e) to 28 U.S.C. § 2255. Accordingly, the April 12 Order set a briefing schedule for the petition.

On June 23, 2023, Lopez submitted a letter stating that, in light of the Supreme Court's June 22 decision in Jones v. Hendrix, 599 U.S. --- (2023), he was "constrained to concede that he may not proceed with his claim . . . via a 28 U.S.C. § 2241 petition" and that he would refile the petition under 28 U.S.C. § 2255. On June 28, Lopez filed a new petition under 28 U.S.C. § 2255 seeking the same relief as that sought in his October 20, 2022 petition and for the same reasons. It is hereby

ORDERED that the Government shall file its response to Lopez's June 28, 2023 petition by August 18, 2023. Any response by Lopez is due September 15, 2023.

IT IS FURTHER ORDERED that the Clerk of Court shall mail a copy of this Order to Lopez and note service on the docket.

Dated: New York, New York
July 5, 2023



DENISE COTE
United States District Judge